

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

JUDY HOUSTON

PETITIONER

v.

No. 3:19CV127-MPM-RP

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS, ET AL.**

RESPONDENTS

**ORDER GRANTING STATE’S MOTION TO DISMISS,
TRANSFERRING PETITION TO THE
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the court on the motion [8] by the State to dismiss the instant petition for a writ of *habeas corpus* for want of subject matter jurisdiction,¹ as the petition is successive. Judy Houston has submitted a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. She was convicted in 1990 for capital murder and two counts of aggravated assault. The petitioner has filed at least one other unsuccessful 2254 petition concerning the same conviction she now seeks to challenge. *See Houston v. State of Mississippi*, 3:13CV196-GHD-JMV.

The Antiterrorism and Effective Death Penalty Act requires that before a district court files a second or successive petition, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” The petitioner has not obtained such an order. As such, the State’s Motion [8] to Dismiss for want of subject matter jurisdiction will be granted.

¹ The court will not address the State’s other grounds for dismissal, as the want of jurisdiction precludes the court from considering those grounds.

Rather than dismissing the petition on this basis, the Fifth Circuit permits district courts to transfer the petition for consideration under 28 U.S.C. § 2244(a) and (b)(3)(c). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is **ORDERED**:

- (1) That the State's Motion [8] to Dismiss is **GRANTED**;
- (2) That this petition will be transferred to the Fifth Circuit Court of Appeals for the petitioner to seek leave to file this successive § 2254 petition;
- (3) That the Clerk of Court is **DIRECTED** to **TRANSFER** this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(c), and *In re Epps*, 127 F.3d at 365; and
- (4) This case is **CLOSED**.

SO ORDERED, this, the 17th day of March, 2021.

/s/ MICHAEL P. MILLS
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI